Shahkri bin Hussain v Menteri Hal Ehwal Dalam Negeri & Penguasa Pusat Pemulihan Serenti

HIGH COURT (KOTA BHARU) — CRIMINAL APPLICATION NO 44–18–99
SURIYADI J
17 JANUARY 2000

Criminal Procedure *— Drug dependents — Magistrate ordered the detention of the applicant pursuant to s 6(4) of the Drug Dependants (Treatment and Rehabilitation) Act 1983 — Whether order defective as s 6(4) was deleted pursuant to Drug Dependants (Treatment and Rehabilitation) (Amendment) Act 1998*

Revision *— Revisionary power of the High Court — Magistrate's order was defective — Whether proper case for revision — Criminal Procedure Code Chapter XXXI*

The application began initially as a habeas corpus action, to have the applicant released, on the premise that he had been detained unlawfully. Come the hearing date, certain pertinent legal issues connected to the case were brought to court's attention by the applicant's counsel. The applicant had initially been detained under s 4(1)(b) of the Drug Dependants (Treatment and Rehabilitation) Act 1983. After the necessary investigations had been undertaken and completed, he was brought before the relevant magistrate for the necessary detention order. The magistrate had ordered the detention of the applicant for two years pursuant to s 6(4) of the Drug Dependants (Treatment and Rehabilitation) Act 1983 effective on 7 July 1999. However pursuant to Drug Dependants (Treatment and Rehabilitation) (Amendment) Act 1998 (Act A1018), effective on 1 September 1998, s 6(4) was deleted and hence the order was pursuant to a section unknown to law.

Held :

As the order was defective, coupled with the applicant's fundamental constitutional right having been breached, and there being a deputy public prosecutor in court to represent the respondents, the court pursuant to Chapter XXXI of the Criminal Procedure Code invoked its statutory powers and henceforth exercised its revisionary powers (see p 434D–E). No constitutional right of an applicant should be compromised or be made subservient to some administrative decision merely to maintain decorum and administrative efficacy. Any delay in his release, not only would be an unsound judicial act but an unnecessary curtailment of his rights and freedom (see p 434F–G).

[Bahasa Malaysia summary

Permohonan dimulakan sebagai suatu tindakan habeas corpus, agar pemohon dibebaskan di atas premis bahawa beliau telah ditahan secara menyalahi undang-undang. Pada hari perbicaraan, isu-isu undang-undang yang berkaitan dengan kes telah dibawa ke perhatian

mahkamah oleh peguam pemohon. Pemohon pada mulanya ditahan di bawah s 4(1)(b) Akta Penagih Dadah (Rawatan dan Pemulihan) 1983. Selepas siasatan yang diperlukan telah dibuat dan dilengkapkan, beliau dibawa ke majistret yang berkenaan untuk perintah penahanan yang diperlukan. Majistret mengarahkan penahanan pemohon selama dua tahun menurut s 6(4) Akta Penagih Dadah (Rawatan dan Pemulihan) 1983 mulai 7 Julai 1999. Namun menurut Akta (Pindaan) Penagih Dadah (Rawatan dan Pemulihan) 1983 (Akta A1018), yang berkuatkuasa pada 1 September 1998, s 6(4) telah dimansuhkan dan dengan itu perintah tersebut adalah menurut suatu seksyen yang tidak diketahui di sisi undang-undang.

Diputuskan, :

Oleh kerana perintah adalah defektif, ditambah pula dengan has asasi perlembagaan pemohon telah dilanggar, dan terdapat seorang timbalan pendakwa raya di mahkamah untuk mewakili responden-responden, mahkamah menurut Bab XXXI Kanun Acara Jenayah membangkitkan kuasa-kuasa statutorinya dan dengan itu melaksanakan kuasa-kuasa semakan (lihat ms 434D–E). Hak perlembagaan pemohon tidak patut diketepikan atau dijadikan kurang penting kerana keputusan tadbir hanya semata-mata untuk mengekalkan ketertiban dan keberkesanan tadbir. Sebarang kelengahan di dalam pembebasannya, bukan hanya suatu tindakan kehakiman yang tidak bijak tetapi adalah pelanggaran yang sia-sia berkenaan dengan hak dan kebebasannya (lihat ms 434F–G).]

Notes

For cases on detention of drug dependents, see 5 *Mallal's Digest* (4th Ed, 1997 Reissue) paras 1513–1516.

For cases on revision, 5 see *Mallal's Digest* (4th Ed, 1997 Reissue) paras 2374–2421.

Cases referred to

Public Prosecutor v Hussain & Anor [1970] 1 MLJ 37 (refd)

Legislation referred to

Drug Dependants (Treatment and Rehabilitation) Act 1983 ss 4(1)(b), 6(4)

Drug Dependants (Treatment And Rehabilitation) (Amendment) Act 1998 (Act A1018)

Criminal Procedure Code (FMS Cap 6)

Federal Constitution art 5(1)

Haji Sukri bin Haji Mohamed (*Wan Haron Sukri & Nordin*) for the applicant.

Dusuki bin Mokhtar (Deputy Public Prosecutor) for both respondents.

Suriyadi J: The application began initially as a habeas corpus action, to have the applicant released before me, on the premise that he had been detained unlawfully. The complaint was that his fundamental liberty had been breached, a basic human right protected under art 5(1) of the Federal Constitution. In support of the habeas corpus application, and to reflect the seriousness of his predicament, the applicant successfully obtained a certificate of urgency from the High Court. At the appointed open court day, the hearing date which had been converted previously to a mention date, the applicant's counsel one Dato Shukri was present but not that of the respondents'. The absence of the respondents' counsel, though not encouraged, regretfully was permitted by the court earlier founded on some good grounds. The saving grace of the respondents' position, in term of representation, was the presence of En Dusuki, the locally based deputy public prosecutor.

The learned deputy public prosecutor unfortunately had received no specific instruction except to mention the case on behalf of the relevant federal counsel. It transpired that the latter had successfully obtained the respondents' prior approval for the postponement, conditional on the matter not being postponed too long. To the credit of this officer, he did fax me a letter clarifying exhaustively his predicament, and spelling out in no uncertain terms the positive attitude of Dato Shukri. He explained, inter alia, that:

i he was in the process of obtaining the notes of proceedings from the magistrate court;

ii he was in the midst of preparing the affidavits-in-reply; and

iii that he was involved with an appeal in the Court of Appeal.

On receipt of that communication, and on the above reasonable grounds, how could I not exercise my discretionary powers and permit the postponement application [s 259 of the Criminal Procedure Code (FMS Cap 6)]. I indicated my agreement through Puan Wan Fadhilah, my senior assistant registrar. Come the hearing date, whilst in the midst of discussing the administrative problems faced by courts finding a future suitable date, certain pertinent legal issues connected to this case were brought to my attention by the applicant's alert counsel. The latter, after having perused the matter at hand, had discovered that the order meted out by the learned magistrate was obviously defective; agreed even by the learned deputy public prosecutor. After appreciating the information, which was to the detriment of the applicant, it thus became incumbent upon me to reconsider the whole situation, inspite of having granted the postponement. To postpone the case would have meant being partisan to the federal counsel's request, which would be at the expense of the applicant. To reconsider my earlier decision would also cast the aspersion that the court had backtracked on its words.

To appreciate my subsequent action, it is necessary for me to dissect that relevant order. The applicant had initially been detained under s 4(1)(b) of the Drug Dependants (Treatment and Rehabilitation) Act 1983. After the necessary investigations had been undertaken and

completed, he was brought before the relevant magistrate for the necessary detention order. Up to this stage everything appeared correct and done in accordance with the law. The flaw reared its ugly head after this stage. The magistrate perhaps ill-advisedly, had ordered the detention of the applicant for two years at the Pusat Serenti Besut, Terengganu pursuant to s 6(4) of the Drug Dependants (Treatment and Rehabilitation) Act 1983, effective on 7 July 1999 ie the very date when he pronounced the order. On further reading, it surfaced that pursuant to certain legislative changes, the above Act (Act 283) had been massively amended. The relevant amendment Act is the Drug Dependants (Treatment And Rehabilitation) (Amendment) Act 1998 (Act A1018), effective on 1 September 1998. Pursuant to this amendment s 6(4) was deleted. Yet when the magistrate meted down the detention order on 7 July 1999, it was still pursuant to the non-existent s 6(4). In brief, the order was pursuant to a section unknown to law (see *Public Prosecutor v Hussain & Anor* [1970] 1 MLJ 37).

After doing some soul searching, bearing in mind the circumstances of the case, namely, the order being obviously defective, coupled with the applicant's fundamental constitutional right having been breached, and there being a deputy public prosecutor in court to represent the respondents, I undertook to do the needful. Pursuant to Chapter XXXI of the Criminal Procedure Code, I invoked my statutory powers and henceforth exercised my revisionary powers. With there being no criteria as to the circumstances under which the High Court could exercise the power of revision, but without being arbitrary and desirable in the interest of justice, I was satisfied that in the circumstances of the case, a revision was in order. This was a case too clear for comfort to ignore, wherein his release without further ado, was the only logical step to undertake. No constitutional right of an applicant should be compromised or be made subservient to some administrative decision merely to maintain decorum and administrative efficacy. I was also aware that even if I were to postpone the case, and hence entailing a further incarceration of the applicant, at the next hearing date I would still have had him released. Any delay in his release, not only would be an unsound judicial act but an unnecessary curtailment of his rights and freedom.

Based on the above grounds I had no hesitation in setting aside the order of the learned magistrate.

Ordering the release of the detainee.

Reported by Benjamin Yong